

1 BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

2 STATE OF MONTANA

3 * * * * *

4 JAMES NELSON, and ANGIE NELSON,)

5 Appellants,)

6 vs.)

7 TRUSTEES OF ABSAROKEE SCHOOL)
DISTRICT NO. 52-C,)

8 Respondents.)

OSPI 196-91

DECISION AND ORDER

9 * * * * *

10 STATEMENT OF THE CASE

11 This matter is an appeal from the decision of the Stillwater
12 County Superintendent dismissing the appeal of James Nelson for
13 lack of jurisdiction.

14 On May 1, 1991, James Nelson, through his attorney, Mark
15 Errebo, appealed the February 11, 1991 decision of Absarokee
16 School District No. 52-C to revoke credits of Angie Nelson, the
17 minor daughter of James Nelson. The county superintendent
18 accepted the appeal and issued an order May 10, 1991 setting a
19 hearing date for the appeal. In a subsequent order dated May 14,
20 1991, she ordered the parties to "show cause why this appeal
21 should not be dismissed for failure to file within the allotted
22 time." On May 17, 1991, she vacated the hearing date and ordered
23 the attorneys "to submit briefs or citations of authority on the
24 issue of the sufficiency of the notice of appeal and timeliness
25

DEC. & ORD. PG. 1

1 of the filing."

2 The county superintendent on June 7, 1991, ordered dismissal
3 of the appeal due to insufficiency of the notice of appeal. She
4 did not reach the issue of timeliness.

5 DECISION AND ORDER

6 The Superintendent of Public Instruction has jurisdiction to
7 hear this appeal in accordance with section 20-3-107, MCA.
8 Having reviewed the record and the briefs of parties, this
9 Superintendent reverses the decision of the county superintendent
10 and remands the matter for further hearing and consideration in
11 accordance with this opinion.

12 OPINION

13 The only issue on appeal to this Superintendent is the
14 sufficiency of the notice of appeal before the county
15 superintendent. The issue of timeliness and the merits of the
16 matter were argued in briefs, but as the county superintendent
17 did not make findings on timeliness and the merits of the case
18 have not been heard, these issues are not before this
19 Superintendent.

20 ARM 10.6.105 sets forth the requirements of a notice of
21 appeal to the county superintendent. The "notice of appeal"
22 filed by Nelson was in the form of a letter from the legal
23 representative of the Nelsons addressed to the county
24 superintendent.

25 The letter states:

DEC. & ORD. PG. 2

May 1, 1991

Ms. Terry Miller
Superintendent of Schools
Stillwater County
Columbus, MT 59019

This letter is to request that a hearing be scheduled before you as soon as possible regarding the appeal of decision of the Absarokee School Board to revoke the credits of Angie Nelson for Fall Semester 1990.

As a result of that decision Ms. Nelson has been suspended from the track team because the loss of credit made her ineligible under the Montana High School Association rules. She therefore requests that you make a preliminary ruling that her credits have not been officially revoked until her right of appeal has been exhausted, thereby enabling her to participate in track and other school activities until it is determined that the action of the school board was proper. Being that Ms. Nelson is suffering ongoing hardship and prejudice as a result of her recent suspension, she prays for your prompt attention to this matter.

I will represent Ms. Nelson at the appeal on the grade revocation as well as any preliminary hearing regarding her eligibility for sports. Thank you.

Sincerely,
/s/
Mark T. Errebo

It is apparent that the notice filed does not meet the exact letter of the requirements for contents of the notice as set out in the administrative rules. However, one must keep in mind the purpose of pleadings -- that of notice. The key to pleading is whether or not the notice of appeal provides the necessary information to inform the parties and the hearing officer of the allegations and other information necessary.

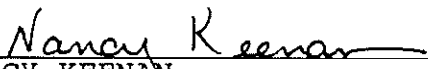

The letter signed by Mr. Errebo, the legal representative of

1 the party, provides the matter asserted -- that of the decision
2 of the trustees revoking credits of the named party, Angie
3 Nelson. There is no citation to a controlling statute since what
4 is clearly being appealed is a decision based on a board policy.
5 Mr. Errebo should have asserted the contested case jurisdiction
6 of the county superintendent and provided a caption. Courts have
7 repeatedly said that the purpose of the administrative complaint
8 is to give the responding party notice of the charges and that
9 the notice is adequate in the absence of a showing that a party
10 was misled.

11 I do not find that any prejudice or manifest injustice will
12 result from excusing the technical deficiencies in the notice.
13 Preference should be to decide matters on the merits and not
14 penalize a party with the literal interpretation of the
15 administrative rules.

16 The county superintendent is ordered to set this matter for
17 hearing and take evidence based on testimony or affidavits to
18 determine if circumstances were such as to excuse the failure to
19 file in a timely manner. Based upon that determination, she
20 shall dismiss the action or proceed to hear it on the merits.

21 DATED this 14 day of January, 1992.

22
23 
24 NANCY KEENAN
25 

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 14th day of January, 1992,
a true and exact copy of the foregoing DECISION AND ORDER was
mailed, postage prepaid, to the following:

Mark T. Errebo
Attorney at Law
P.O. Box 1716
Billings, MT 59103

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Stillwater County Supt.
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Scott Campbell
Scott Campbell
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Office of Public Instruction